Criminal Appeal No.629-DBA of 1996 and
Criminal Revision No. 562 of 1996

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Appeal No.629-DBA of 1996

State of Punjab **...**Appellant

VERSUS

Daljit Singh and others **...**Respondents

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. D.S. Brar, Deputy Advocate General,
Punjab, for the appellant.

Mr. Gurbachan Singh Bhatia, Advocate, with
Mr.Jasmeet Singh Bhatia, Advocate,
for the respondents.

Criminal Revision No. 562 of 1996

Surjeet Singh **...**Petitioner

VERSUS

Daljit Singh and others **...**Respondents

Criminal Appeal No.629-DBA of 1996 and
Criminal Revision No. 562 of 1996

Present: None for the petitioner.

Mr. Gurbachan Singh Bhatia, Advocate, with
Mr.Jasmeet Singh Bhatia, Advocate,
for the respondents.

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

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MOHINDER PAL, J.

This judgment will dispose of Criminal Appeal No.629-DBA of 1996 and Criminal Revision No.562 of 1996, described above.

2. Respondents Daljit Singh son of Mohinder Singh, Mohinder Singh son of Lakha Singh, Parkash Kaur wife of Mohinder Singh and Kulwant Kaur alias Banto daughter of Mohinder Singh were tried by the learned Sessions Judge, Kapurthala, in case First Information Report No.68 dated August 02, 1993, registered under Section 304-B read with Section 34 of the Indian Penal Code (hereinafter referred to as `the Code') registered at Police Station City Phagwara. Vide judgment dated April 29, 1995, passed by the Sessions Judge, Kapurthala, the respondents were acquitted of the charge framed against them. Criminal Appeal No.629-DBA of 1996 has been preferred by the State of Punjab and Criminal Revision No.562 of 1996 has been preferred by

Surjeet Singh (complainant) challenging the acquittal of the respondents.

3. Leave to appeal was granted and Criminal Appeal No.629-DBA of 1996 was admitted on December 05, 1996 and Criminal Revision No.562 of 1996 was ordered to be heard along with this appeal as per order dated March 01, 2007.

4. The facts of the prosecution case are as below:-

Surjit Kaur (since deceased) was marred to Daljit Singh (respondent No.1) on April 15, 1993. After the marriage, parents of Surjit Kaur (deceased) had shifted to Bihar where Piara Singh (father of the deceased) was working in Bukharo Steel Plant. Mohinder Singh (respondent No.2) is father of Daljit Singh, Parkash Kaur (respondent No.3) is mother of Daljit Singh and Kulwant Kaur alias Banto is his sister. After about a few days of the marriage, the accused-respondents started harassing Surjit Kaur (deceased) for having brought insufficient dowry. Surjit Kaur used to tell her sister's husband Surjeet Singh (complainant-P.W.4) and her sister Ranjit Kaur (P.W.5) about the harassment and demand of dowry by the respondents. It is alleged that after about one month of the marriage, demand of Rs.10,000/- made by the accused was met by complainant Surjeet Singh. Again Rs.10,000/- were demanded by the accused and were paid by complainant Surjeet Singh. However, even then the accused continued harassing Surjit Kaur (deceased).

On August 02, 1993, at about 9 P.M, one Mr.Debi

delivered a message at the house of Surjeet Singh (P.W.4) about the admission of Surjit Kaur (deceased) in Civil Hospital, Phagwara. Surjeet Singh along with his wife Ranjit Kaur went to Civil Hospital, Phagwara, and found that Surjeet Kaur had died. Thereafter, Surjeet Singh went to the Police Station and got recorded his statement (Exhibit P.D) before Sub Inspector Mulakh Raj (P.W.6), on the basis of which formal First Information Report (Exhibit P.D/1) was registered. Sub Inspector Mulkh Raj (P.W.6) then went to the hospital and prepared the inquest report (Exhibit P.C). He sent the dead body for post mortem examination along with request (Exhibit P.B). He then visited the place of occurrence and prepared rough site plan (Exhibit P.G.). The accused were arrested on August 05, 1993. After completion of investigation, challan against the accused was presented in Court.

5. In order to prove its case, the prosecution examined Dr.Karnail Singh (P.W.1), Gurdev Singh, Photographer (P.W.2), Piara Singh, father of the deceased (P.W.3), Surjeet Singh, husband of sister of the deceased (P.W.4), Ranjit Kaur, sister of the deceased (P.W.5), Sub Inspector Mulakh Raj, Investigating Officer (P.W.6), Head Constable Surinder Singh (P.W.7), Moharrir Head Constable Jarnail Singh (P.W.8) and Constable Ram Kishan (P.W.9).

6. After completion of prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which they denied the prosecution allegations

and pleaded false implication. Accused Daljit Singh, Mohinder Singh and Parkash Kaur further pleaded that they never harassed the deceased nor demanded any dowry while accused Kulwant Kaur pleaded that she was married about 17/18 years ago with Harbhajan Singh at Village Bajwara, District Hoshiarpur, which is at a distance of about 27/28 kms from her parental house. She further pleaded that she has three children and she never demanded any dowry nor ever interfered in the affairs of her brother Daljit Singh, respondent. They, however, did not lead any evidence in defence.

7. We have heard the learned counsel for the parties and have gone through the records.

8. Learned Deputy Advocate General, Punjab, appearing for the State of Punjab – appellant, argued that the prosecution witnesses, brought forward by it, had fully supported the prosecution case, but the learned Sessions Judge totally ignored the same and acquitted the accused. The trial Judge did not take into consideration the fact that the marriage of the deceased with respondent No.1 was just about three and a half months old and she was subjected to cruelty and harassment by the accused-respondents. He further contended that the finding of the trial Court that the deceased would have certainly approached her parents to meet the demand of dowry by the respondents and not Surjeet Singh (complainant), who is sister's husband of the deceased, cannot be upheld because the parents of the deceased had shifted to Bihar after the marriage

and Surjeet Singh and his wife Ranjit Kaur were the only persons here to whom the deceased could have informed about the demand of dowry and that both Surjeet Singh and Ranjit Kaur (P.W. 4 and P.W.5, respectively) have supported the prosecution case.

9. On the other hand, learned counsel for the accused-respondents, supported the finding recorded by the learned Sessions Judge that it is not proved on the record that the deceased was subjected to cruelty or harassment by the accused in connection with the demand of dowry before her death. Relying upon the evidence of Dr. Karnail Singh (P.W.1), who had conducted autopsy on the dead body of Surjit Kaur along with Dr.G.S. Virdi and Dr. (Mrs.) Sunita Rao, he vehemently argued that the cause of death of Surjit Kaur was asphyxia due to cerebral spinal injury. As such, the death was not due to strangulation. There was no ligature mark present on the neck. No poison was was found in any of the organs sent for examination to the Chemical Examiner. The death of Surjit Kaur was due to an accident. He contended that until and unless it is proved that the death was suicidal or homicidal, it does not become unnatural death, which is an essential ingredient of Section 304-B of the Code. He also referred to judgment dated March 28, 2000, passed in Civil Suit No.123 of 1996 by the Civil Judge (Junior Division), Nawanshahar, whereby claim of Piara Singh, father of the deceased, for recovery of Rs.1,40,000/- being the value of dowry articles /Istri Dhan of Surjit Kaur

(deceased), was dismissed.

10. After hearing the learned counsel for the parties and going through the records, we are of the opinion that success or failure of this appeal hinges upon the fact - as to whether the death of Surjit Kaur was natural or unnatural, the same having occurred within seven years of her marriage. For determining this point, reference to medical evidence is necessary. Dr. Karnail Singh (P.W.1), who had conducted autopsy on the dead body of Surjit Kaur along with Dr.G.S. Virdi and Dr. (Mrs.) Sunita Rao, deposed that white forth was seen dribbling from the left angle of the mouth of the deceased and white froth was present in both of the nostrils as well. Both eyes were closed and tongue was protruding and was seen to be caught in between the teeth. Rigor mortis was present in all the extremists sparing the neck of the deceased as the neck of the deceased was freely mobile as well as the chin of the deceased could be touched to the chest of the deceased. The doctor observed one lacerated wound on the left index finger at the junction of middle and distal phalanx which bled on touch and was 5 cm skin deep. Nails of both the hands were bluish in colour. Heart, stomach, certain pieces of both the lungs, certain pieces of liver, pieces of both kidneys, uterus along with foetus (male), parts of brain and specimen of the preservative used were sent for examination to the Chemical Examiner. On receipt of the report of the chemical Examiner, it was found that there was no poison in any of the above-said organs sent for

examination. As per opinion of the Doctors, the cause of death was due to asphyxia as a result of cerebral spinal injury.

11. The medical evidence, referred to above, shows that the cause of death of Surjit Kaur was on account of asphyxia due to cerebral spinal injury. In this view of the matter, the argument raised by learned counsel for the respondents that as there was no ligature mark on the neck and opinion of the doctors shows that death was on account of asphyxia due to cerebral spinal injury, it cannot be said that the death was due to strangulation, appears to be correct. Moreover, no poison was found in any of the organs sent for examination to the Chemical Examiner. As such, dribbling of white froth from the mouth of the deceased and presence of white froth in both the nostrils of the deceased, could be the result of fit of epilepsy. Under these circumstances, the possibility of cerebral spinal injury having been suffered by Surjit Kaur due to fall on account of fit of epilepsy which led to asphyxia and her death, cannot be ruled out. Therefore, it cannot be said that the death was not due to strangulation and, rather, it was due to an accident. The law with regard to the powers of the High Court while hearing appeal against the order of acquittal was summarised by the apex Court in the case of **Allarakha K.Mansuri vs. State of Gujarat**, *2002(1) RCR (Criminal) 748*, and it was laid-down that it should not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced and

that the High Court should be slow in disturbing the finding of fact arrived at by the trial Court. The Apex Court further observed that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Further that paramount consideration of the Court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent.

12. Without dilating any further in the matter, after having come to the afore-said conclusion on the basis of medical evidence produced in this case and in view of the observations of the Apex Court in **Allarakha K.Mansuri** case (supra), we refrain from interfering in the impugned judgment of acquittal. The appeal is, accordingly, dismissed. Resultantly, the revision petition filed by Surjeet Singh (complainant) is also dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

November 05, 2007.
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(MOHINDER PAL)
JUDGE